of the S. & C. transaction; and that since the Spencer transaction involved the sale and purchase of operating rights between two motor carriers owning less than twenty vehicles, it was within the exemption of Section 5(10) and thus did not require approval under Section 5.

On appeal, the district court concluded (J.S. App. A9–10), that the S. & C. transaction involved a transfer from a carrier to a non-carrier and was not subject to Section 5; that the later Spencer transaction involved a transfer between 2 carriers owning less than twenty vehicles and was exempt from Section 5 by the provisions of Section 5(10); and that the Commission acted within its authority in permitting the operating rights of S. & C. and Spencer to be transferred to Stevens in separate transactions under Section 212(b) of the Act.

ARGUMENT

This case presents no substantial question warranting plenary consideration by this Court. Despite the inconsequential character of the transactions here in question (only four vehicles were required to operate all the rights involved), the three-judge district court carefully considered appellants' objections to the Commission's approval of the transactions under Section 212(b)—objections which were not brought to the attention of the Commission until after the S. & C. transaction had already been consummated. The district court's decision was entirely correct.

Section 5 of the Interstate Commerce Act, at least as it relates to motor carriers, is concerned in general with acquisitions of two or more carriers in a transaction of a substantial character. Section 212(b), on the other hand, and the rules prescribed under it, are designed to cover smaller and less complicated transactions. *United States* v. *Resler,* 313 U.S. 57; *Stearn* v. *United States,* 87 F. Supp. 596, 601–602 (W.D. Va.); *Atwood's Transport Line—Lease—Clarke,* 52 M.C.C. 97, 105–108.

Section 5, so far as here pertinent, provides that a noncarrier may acquire control of two or more carriers only if the Commission finds, in accordance with the standards set forth in Section 5(2)–(13), that the acquisition is consistent with the public interest. Section 5(10) affords an exemption, however, in the case "where the only parties to the transaction are motor carriers * * * and where the aggregate number of motor vehicles owned * * * or operated by such parties * * * does not exceed twenty." In such case, "any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe." Section 212(b). These rules and regulations have been prescribed (49 C.F.R. 179, Rev. Ed. 1961), and their purpose is to enable the Commission to ascertain the identity of the transferees in order to determine their fitness, willingness and ability to render service. *Abco Moving & Storage Co., Inc.—Purchase—Dierking,* 47 M.C.C. 557, 569.

Here, the Commission found that the S. & C. and Spencer transactions were not related or dependent, even though the applications for approval happened to be concurrently pending for a short period. By the time appellants filed their motions opposing the transfers, the S. & C. transaction had already been approved and consummated and Stevens had become a carrier. Its arrangement with Spencer, therefore, was within the exemption of Section 5(10) (because the total number of vehicles owned or operated was less than twenty) and was thus subject to approval under the transfer rules prescribed pursuant to Section 212(b), rather than under Secton 5. The Commission's decision was in keeping with the Congressional purpose to provide a means whereby transfers or mergers by small carriers could be effected without the delays and procedural complications required for more substantial transactions under Section 5. *United States* v. *Resler*, 313 U.S. 57, 60. In these circumstances the district court was plainly correct in upholding the Commission's ruling that the status of the parties was to be determined as of the date of consummation of the S. & C. transaction—or, what would amount to the same thing, as of the date appellants filed their motions—rather than as of the date the Spencer-Stevens application was filed, as appellants urge.

CONCLUSION

The appeal presents no substantial issue warranting plenary consideration and the judgment of the court below should be affirmed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LEE LOEVINGER,
Assistant Attorney General.

ROBERT B. HUMMEL,
IRWIN A. SEIBEL,
Attorneys.

ROBERT W. GINNANE,
General Counsel,

ARTHUR J. CERRA,
Assistant General Counsel,
Interstate Commerce Commission.

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